



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]

DECISION

FOP/146757

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed January 18, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 21, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Alma Lezama

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent Petitioner two notices of FoodShare overissuance. Both are dated December 28, 2012. The first indicates that there was an overissuance of FoodShare benefits for the period from November 5, 2010 to October 31, 2011 in the amount of \$5912.00. This is claim number [REDACTED]. The second notice informed Petitioner of an overissuance of FoodShare benefits for

the period from March 5, 2012 to October 31, 2012 in the amount of \$2869.00. This is claim number [REDACTED]. Thus the total claim is \$8781.00.

3. The basis for both of these FoodShare overissuance claims was client error for an alleged failure to properly report household composition and thus the correct income for the household.
4. Petitioner applied for FoodShare benefits for himself and his three children on or about November 5, 2010.
5. On April 7, 2011 Petitioner contacted the agency and added the mother (SJ) of some of his children to the case.
6. In May 2011 Petitioner completed a six-month report form and indicated that the SJ was again out of the home.
7. In September 2011 Petitioner contacted the agency reported that SJ and another child were back in the home. The agency asked for verification, did not receive that verification and closed the case effective October 31, 2011.
8. Petitioner reapplied for FoodShare benefits on March 5, 2012. That application was approved.
9. Petitioner and SJ married in June 2011.
10. The agency concluded that Petitioner and SJ had lived together throughout the time period involved here, again November 2010 through October 2011 and March 2012 through October 2012. Her income has not been included in the eligibility and allotment calculations during that time.

### DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

As decided in prior cases before the Division of Hearings and Appeals, “discovery” was not the date of referral of a likely overpayment for investigation; discovery is the date when the agency actually determines an overpayment of a fixed amount occurred, and sends a notice to the FS recipient. Overpayments due to client error may be recovered for up to 6 years prior to discovery. However, a April 4, 2012 BPS/DFS Operations Memo, No. 12-20 (effective 4-4-2012), indicates that the “discovery” date is not the county agency’s December 28, 2012 FS Overpayment Notice, but instead the “the date that the ESS became **aware** of the potential that an overissuance may exist.” In this case, that date appears to be sometime during November 2012 based on the agency summary but it is not documented in any other way that I find in the agency documents.

Finally, in an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A petitioner must then rebut the agency’s case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

I am declining to sustain the overissuance alleged here. There are 20 months of overissuance alleged here; the twelve months from November 2010 to October 2011 and the 8 months from March 2012 through October 2012. There is no evidence of SJ being in the home in the months where Petitioner reported that she was out. The address information supplied by the agency is primarily from 2007-2009. The only other information is a credit report from 2012 that only covers the period from October 2012 forward. A KIDS printout indicates that the above address is a 'mail' address for SJ; it does not indicate it is a residence.

I am troubled by the fact that the couple married in June 2011 and I also note that the couple had a baby born in 2/22/2011. Nonetheless, the relationship seems to have its issues and, again, Petitioner was making regular reports of SJ's in and out of the home status. Ultimately, the agency has to provide some evidence to support its claim as to the household composition for the time period of the alleged overissuance. Here it has not done so.

### **CONCLUSIONS OF LAW**

That the evidence offered by the agency is not sufficient to demonstrate that Petitioner was overpaid FoodShare benefits as alleged herein.

**THEREFORE, it is**

**ORDERED**

This matter is remanded to the agency with instructions to take the administrative steps necessary to reverse overpayment claim numbers [REDACTED] and [REDACTED]. This must be done within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

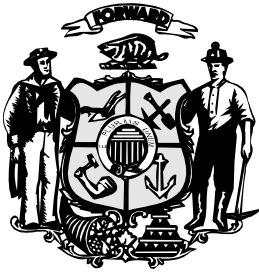
Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 19th day of March, 2013

---

\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 19, 2013.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability